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IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

HOWARD WRENN and SANDRA BELCHER,
as Natural Parents and
Co-Administrators of the ESTATE
OF MATTHEW WRENN, and ANGELIA
HARPER, as Natural Mother and
Administrator of the ESTATE OF
JUSTIN JANES,

Plaintiffs,

v.

Civil Action No. 08-C-93
Judge Hrko

THE WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION, DIVISION
OF HIGHWAYS,

Defendant.

DEFENDANT'S

ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS

On Friday, July 11, 2008, came Plaintiffs represented by counsel, Mark W. Kelley, Esquire, Ray, Winton & Kelley, PLLC, and came the Defendant, the West Virginia Department of Transportation, Division of Highways by its counsel, Richard L. Earles, Esquire, upon Defendant's motion to dismiss the complaint asserting Article VI, Section 35 of the Constitution of the State of West Virginia, that the State of West Virginia cannot be made a defendant for money damages unless the state has liability state insurance coverage for the loss as alleged in the complaint.

The Court notes that the complaint alleges a single vehicle accident resulting in two fatalities and that the claims against defendant including negligent failure to inspect, repair,

maintain, attend to and make reasonably safe for the motoring public, including Plaintiffs' decedents, Devil's Fork Road and the defendant's rights of way along said road. The Court further notes that the complaint does not make any allegation that any employees of the West Virginia Department of Transportation, Division of Highways, were physically present on the day of the accident or at any time leading up to the time of the accident alleged in the complaint. The Court also notes that the complaint alleges Endorsement No. 7, which excludes coverage unless the West Virginia Department of Transportation, Division of Highways employees are physically present at the site of the incident, is unsigned and therefore not part of the insurance policy, and is also against public policy and laws of the State of West Virginia.

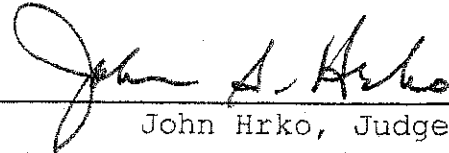
Upon mature consideration of the written submission of the parties, as well as the argument provided at the hearing, and all pertinent law the Court grants Defendant's motion to dismiss.

IT IS THEREFORE **ORDERED**, that the above-styled action be and is hereby **dismissed with prejudice** and the above-styled action shall be stricken from the clerk's docket.

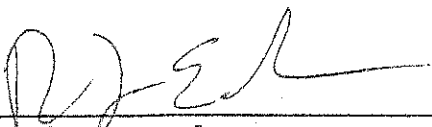
The Court notes Plaintiffs' objection and exception to the rulings of the Court dismissing the above-styled action with prejudice.

IT IS FURTHER **ORDERED**, that the clerk send copies of
this Order to all counsel of record herein.

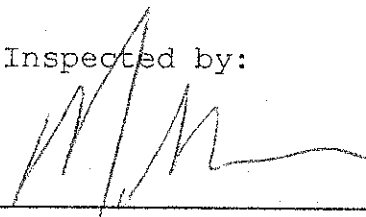
Entered this 14 day of August, 2008.


John Hrko, Judge


Prepared by:


Richard L. Earles, Attorney
(WV Bar No. 1097)
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Legal Division
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Counsel for Defendant
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Inspected by:


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(304) 342-1141
Counsel for Plaintiffs

A TRUE COPY, ATTEST.
DAVID "BUGS" STOVER, CLERK

This the 15 day of Aug, 20 08
By 
Deputy.